A **PROLINK MARKETING SDN BHD v. AMBANK ISLAMIC BHD**

COURT OF APPEAL, PUTRAJAYA
YAACOB MD SAM JCA
RAVINTHRAN PARAMAGURU JCA
NORDIN HASSAN JCA
B [CIVIL APPEAL NO: W-02(NCC)(A)-158-01-2021]
12 SEPTEMBER 2022

Abstract – *(i) Based on s. 469(1)(c) of the Companies Act 2016, the court's discretionary power in hearing a winding-up petition is either to dismiss the petition, adjourn the hearing of the petition or make an interim order, or any other order as the court thinks fit. Although the phrase 'any other order as the court thinks fit' seems to provide a wide discretionary power to the court, it is not without limitation as the order made must relate to the winding-up petition where the ultimate result is either to allow the application for the winding-up or to dismiss it; (ii) A court order that imposes a condition for the company to pay a judgment sum within a certain period of time before a winding-up order is made effective is fair and reasonable as a company is given time to pay its debts; the condition is also relevant because it relates to the winding-up application where the ultimate result is the winding-up of the company. A conditional winding-up order is therefore in accordance with the provision of the said s. 469(1)(c).*

F ***COMPANY LAW:*** *Winding-up – Conditional winding-up – Order for – Whether High Court Judge empowered to make conditional winding-up order – Whether condition to pay judgment sum within certain period relate to winding-up of company as its non-compliance would result in granting of winding-up application – Whether fell within provision 'any other order as the court thinks fit' under s. 469(1)(c) of Companies Act 2016*

G ***WORDS & PHRASES:*** *'any other order as the court thinks fit' – Companies Act 2016, s. 469(1)(c) – Whether wide in its natural and ordinary meaning – Purport and intention of Parliament – Court ordered conditional winding-up order against company – Whether condition to pay judgment sum within certain period relate to winding-up of company as its non-compliance would result in granting of winding-up application – Whether fell within provision*

The respondent obtained a final judgment against the appellant at the High Court for, *inter alia*, certain sums and late payment charges. The respondent subsequently served on the appellant the statutory notice of demand pursuant I to ss. 465(1)(e) and 466(1)(a) of the Companies Act 2016 ('CA'), demanding the judgment sums. In the same notice, the respondent also gave notice that, unless the appellant paid the said sums to the respondent within 21 days from

the date of the service of the notice, the appellant shall be deemed unable to pay the appellant's debt and winding-up proceedings may be taken against the appellant. The appellant, however, failed to pay the sum demanded in the said notice. Consequently, the respondent filed the winding-up petition at the High Court and served on the appellant the sealed copy of the petition. The respondent, as the petitioner, applied to wind up the appellant pursuant to ss. 465(1)(e), (h) and 466(1) of the CA. Having considered the submission by the parties and all the evidence on 5 August 2020, the High Court Judge ('HCJ') ordered a conditional winding-up order against the appellant. Aggrieved, the appellant appealed. The main issue that arose was whether the HCJ was empowered to make the conditional winding-up order.

Held (dismissing appeal)
Per Nordin Hassan JCA delivering the judgment of the court:

(1) It is plain and unambiguous, from a reading of s. 469(1) of the CA, that the court's discretionary power on hearing a winding-up petition is either to dismiss the petition, adjourn the hearing of the petition or make an interim order, or any other order as the court thinks fit. Hence, the court must give effect to its natural and ordinary meaning without any other interpretation. The phrase 'any other order as the court thinks fit' under s. 469(1)(c), in its natural and ordinary meaning, is wide. The court, on hearing a winding-up petition, may make other order as the court thinks fit that relate to the winding-up petition. This is a discretion given by law to a HCJ. (paras 14 & 17)

(2) On 5 August 2020, the HCJ had made an order that the appellant shall be wound-up on 5 January 2021 if it fails to pay the judgment sums by that date. The condition to pay the judgment sums in the five months' period failing which the appellant shall be wound-up entailed the ultimate result of granting the application for the winding-up of the appellant. The final order was the winding-up of the appellant on 5 January 2021. The condition imposed by the HCJ was not entirely an independent remedy outside the application for the winding-up. The condition to pay the judgment sum within five months relate to the winding-up of the appellant as the non-compliance of the condition would ultimately result in the granting of the application to wind-up the appellant with effect on 5 January 2021. As such, it fell within the provision 'any other order as the court thinks fit' under s. 469(1)(c) of the CA. (paras 18 & 21)

(3) Although the phrase 'any other order as the court thinks fit' seems to provide a wide discretionary power to the court, but it was not without limitation. The order made must relate to the winding-up petition where the ultimate result was either to allow the application for the winding-up or to dismiss it. In the present case, the ultimate result was the

application to wind-up the appellant was made when the condition to pay the judgment sum was not fulfilled. The imposition of the condition of five months' period for the appellant to pay the judgment sums was fair and reasonable and it benefited the appellant as the appellant was given time to pay the debts. The condition was also relevant because it related to the winding-up application where the ultimate result was the winding-up of the appellant on 5 January 2021 by the order dated 5 August 2020. The conditional winding-up order dated 5 August 2020 was in accordance with the provision of s. 469(1)(c) of the CA. (paras 22, 25 & 26)

(4) The contention that the High Court's power on hearing a petition on winding-up could only decide to dismiss or grant the application was misconstrued. This would make the phrase 'other order as the court thinks fit' under s. 469(1)(c) superfluous and render the provision otiose. Clearly, Parliament does not legislate in vain. The purport and intent of Parliament in legislating this provision must be given its effect. Further, there is no provision under the CA and in particular s. 469(1) that prohibits the imposition of the condition to pay the debts within a period of time before the winding-up is to be made effective. On the contrary, s. 469(1)(c) allows the High Court to do so. (paras 29, 30 & 32)

Case(s) referred to:

Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor [2020] 3 CLJ 153 FC ***(refd)***

Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors [2020] 1 CLJ 747 FC ***(refd)***

Fawcett Properties Ltd v. Buckingham County Council [1960] 3 All ER 503 ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Pyx Granite Co Ltd v. Minister Of Housing And Local Government & Another [1958] 1 QB 554 ***(refd)***

See Teow Guan & Ors v. Kian Joo Holdings Sdn Bhd & Ors [1997] 2 CLJ 299 CA ***(refd)***

Tebin Mostapa v. Hulba-Danyal Balia & Anor [2020] 7 CLJ 561 FC ***(refd)***

Legislation referred to:

Companies Act 2016, ss. 465(1)(e), (h), 466(1)(a), 469(1)(c)

Town and Country Planning Act 1947 [UK], s. 14(1)

For the appellant - Kunamony Kandiah; M/s Mohd Latip & Assocs
For the respondent - Irwan Ismail & Muhammad Izzat Zainal; M/s Lee & Koh

[Editor's note: For the High Court judgment, please see Ambank Islamic Berhad v. Prolink Marketing Sdn Bhd [2021] 1 LNS 281 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Nordin Hassan JCA:

[1] This is an appeal against the High Court's conditional winding-up order dated 5 August 2020 in which the High Court ordered the appellant to pay the full sum demanded by the petitioner under the petition dated 5 December 2019 and the statutory notice of demand dated 7 November 2019 before 5 January 2021. Failing to comply with the said order, the appellant shall be wound-up on the said date, 5 January 2021.

The Background Facts

[2] On 21 October 2019, in suit No. WA-22M-253-04-2019, the respondent obtained a final judgment against the appellant at the Kuala Lumpur High Court. The judgment obtained by the respondent was for the following sum:

(i) RM15,470,245.98 calculated as of 31 March 2019 under Multi-Trade Facility-i (1); Islamic Bankers Acceptance 1;

(ii) Late payment charges (Ta'widh) at the Inter-Bank Islamic Money Market Rate (current rate as of 1 April 2019 was 3.22% per annum and subject to changes from time to time) on the principal outstanding under Multi-Trade Facility-i (10) Islamic Bankers Acceptance 1 in the sum of RM14,963,862 calculated on the daily basis from 1 April 2019 until the date of full settlement;

(iii) RM10,343,134.55 calculated as of 31 March 2019 under Multi-Trade Facility-i (2): Islamic Bankers Acceptance 2;

(iv) Late payment charges (Ta'widh) at the Inter-Bank Islam Money Market Rate (current rate as of 1 April 2019 was 3.22% per annum and subject to changes from time to time) on the principal outstanding under the Multi-Trade Facility-i (2): Islamic Bankers Acceptance 2 in the sum of RM9,989,717 calculated on the daily basis from 1 April 2019 until the date of full settlement.

(v) RM13,128,193.32 calculated as of 15 April 2019 under the Term Financing-i;

(vi) Late payment charges (Ta'widh) at the rate of 1.0% per annum calculated on the daily basis on the balance outstanding under Term Financing-i Facility (RM6,541,220.93 as of 15 April 2019) from 16 April 2019 until the maturity date or the date of the judgment whichever is earlier;

(vii) Late payment charges (Ta'widh) at the Inter-Bank Money Market Rate (current rate as of 16 April 2019 was 3.21% per annum and subject to changes from time to time) on the balance outstanding calculated on daily basis under the term financing from the maturity date of the judgment whichever is earlier until the date of full settlement;

(viii) RM11,205.47 calculated as of 15 April 2019 under the Complementary Term Financing-i;

(ix) Late payment charges (Ta'widh) at the rate of 1.0% per annum calculated on daily basis on the balance outstanding under Complementary Term Financing-i (RM10,287.71 as of 15 April 2019) from 16 April 2019 until the maturity date or the date of the judgment whichever is earlier;

(x) Late payment charges (Ta'widh) at the Inter-Bank Islamic Money Market Rate (current rate as of 16 April 2019 was 3.21% per annum and subject to changes from time to time) on the balance outstanding calculated on daily basis under Complementary Term Financing-i from the maturity date or the date of the judgment whichever is earlier until the date of full settlement; and

(xi) Cost in the sum of RM4,000.

[3] The respondent then served on the appellant the statutory notice of demand dated 7 November 2019 pursuant to s. 465(1)(e) and s. 466(1)(a) of the Companies Act 2016 ("the CA 2016"), demanding the judgment sums as alluded to above. In the same notice, the respondent also gave notice that, unless the appellant paid the said sums to the respondent within 21 days from the date of the service of the notice, the appellant shall be deemed unable to pay the appellant's debt and winding-up proceedings may be taken against the appellant.

[4] However, the appellant failed to pay the sum demanded in the said notice.

[5] Consequently, on 5 December 2019, the respondent filed the winding-up petition at the High Court Kuala Lumpur and served on the appellant the sealed copy of the petition with the affidavit verifying petition. The respondent as the petitioner, had applied to wind-up the appellant pursuant to ss. 465(1)(e), (h), and 466(1) of the CA 2016.

[6] For ease of reference, ss. 465(1)(e), (h) and 466(1) are as follows:

(i) section 465(1)

The Court may order the winding-up:

..

(e) **the company is unable to pay its debts;**

..

(h) the Court is of the opinion that it is just and equitable that the company be wound up; (emphasis added)

(ii) section 466(1)

A company shall be deemed to be unable to pay its debt if:

(a) the company is indebted in the sum exceeding the amount as may be prescribed by the Minister and a creditor by assignment or otherwise has served a notice of demand, by himself or his agent, requiring the company to pay the sum due by leaving the notice at the registered office of the company, and the company has for twenty-one days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) execution or the process issued on a judgment, decree, or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) It is proved to the satisfaction of the Court that the company is unable to pay its debts and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

[7] In the winding-up petition, it contained the following prayers:

(i) PROLINK MARKETING SDN BHD (Company No. 199801013969 [470098-U] be wound-up by the court under the provisions of the Companies Act 2016;

(ii) That the Official Receiver from the office of the Director General of the Malaysia Department of Insolvency be appointed as the Liquidator of the said company;

(iii) Or that such order may be made in the premises as shall be just; and

(iv) That your petitioner be allowed its costs of and incidental to the winding-up to be taxed by the Proper Officer of the court and paid by the Liquidator out of the assets of the company.

[8] Having considered the submission by both parties and all the evidence, on 5 August 2020, the High Court Judge ordered a conditional winding-up order against the appellant which is as follows:

UPON THE PETITION of the AMbank Islamic Berhad (Company No. 199401009897 [295576-U], the abovenamed Petitioner on the 5 December 2019 (Enclosure 1) preferred onto the Court AND UPON HEARING Irwan bin Ismail of counsel for the Petitioner (together with him Muhammad Izzat bin Zainal) and Dinesh Nandrajog of counsel for the Respondent and opposing contributory Vallaipan a/l Perumal (together with him M Indrani) and mentioning on behalf of opposing creditor SS

2WO Holdings (M) Sdn Bhd and in the presence of Farrah Emmylya of counsel for the supporting creditor Small Medium Enterprise Development Bank Malaysia Berhad AND UPON READING the said Petition dated 5 December 2019, Affidavit Verifying the Petition of Khaw Kok Wee and Hooi Lai Ping affirmed on the 6 December 2019, Registrar Certificate dated 22 January 2020 and THIS COURT DOTH ORDER THAT *the Respondent pays monies owed to the Petitioner within 5 months from the date hereof, ie, on or before 5 January 2021, the full sum demanded by the Petitioner under the Petition dated 5 December 2019 and the Statutory Notice of Demand dated 7 November 2019.*

AND IT IS HEREBY FURTHER ORDERED THAT *in the event the Respondent fails to pay the full sum demanded as stated above, the Respondent shall immediately be wound up by this Court on 5 January 2021.*

(emphasis added)

[9] Aggrieved by the High Court's decision, the appellant appealed to this court.

The Appeal

[10] The main issue in the present appeal is whether the High Court Judge was empowered to make the conditional winding-up order on 5 August 2020. The condition in the said order was for the appellant to pay the judgment sums before 5 January 2021 and failing which the appellant shall be wound-up on 5 January 2021.

[11] Essentially, counsel for the appellant contended that the High Court Judge erred in making the conditional winding-up order as there cannot be a 'prospective' order to wind-up a company. It was submitted that the judge fell into error in ordering the winding-up of the appellant to take place at a future date which is on 5 January 2021 based on the order made on 5 August 2020. As such, it is the appellant's stand that there was no order made by the court on 5 August 2020 to wind-up the appellant.

[12] Conversely, the respondent submitted that the High Court Judge was empowered to make the conditional winding-up order on 5 August 2020 where the winding-up takes effect on 5 January 2021 upon failure by the appellant to pay the judgment sums. Here, it was argued that the High Court Judge had exercised his discretion pursuant to sub-s. 469(1)(c) of the CA 2016.

[13] This appeal is concerned with the power of the High Court Judge on hearing a winding-up petition and the interpretation of s. 469(1)(c) of the CA 2016. For ease of reference s. 469(1) is produced below which states:

469(1) on hearing the petition for winding up, the Court may, by order: A

(a) Dismiss the petition with or without costs;

(b) Adjourn the hearing conditionally or unconditionally; or

(c) Make an interim order or **any other order as the Court thinks fit.**
(emphasis added) B

[14] Section 469(1) above, we find, is plain and unambiguous that the court's discretionary power on hearing a winding-up petition is either to dismiss the petition, adjourn the hearing of the petition, or make an interim order, or any other order as the court thinks fit. Hence, the court must give effect to its natural and ordinary meaning without any other interpretation. C

[15] In this regard, it is useful to refer to the recent Federal Court case of *Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors* [2020] 1 CLJ 747 where this was said:

[45] In our considered opinion, the provisions of s. 4(1) and (5) of 1985 Act are very clear. *It is trite that where the words are clear and unambiguous, a court should give effect to the plain words***.** In *Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645; [2002] 1 MLJ 385, citing the decision of the Supreme Court of India in the case of *Hiralal Ratan Lal v. The Sales Tax Officer*, Section III, Kanpur AIR 1973 SC 1034, this court observed: D E

> In construing a statutory provision, the first and foremost rule of construction is the literary construction. *All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision the legislative intent is clear, we need not call into aid the other rules of construction of statutes.* (emphasis added) F

[16] Likewise in another Federal Court case of *Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2020] 7 CLJ 561 where it was held as follows:

[30] In our opinion, the rules governing statutory interpretation may be summarised as follows. First, in construing a statute, *effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it.* The court will not read words into a statute unless a clear reason for it is to be found in the statute itself. *Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute.* Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used. Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes. *Therefore, where the words of a statute are unambiguous, plain, and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning. It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the Legislature and it has no power to fill in the gaps disclosed …* G H I
(emphasis added)

[17] Reverting to the present case, the phrase "any other order as the court thinks fit" under s. 469(1)(c) we find, its natural and ordinary meaning is wide. The court on hearing a winding-up petition may make other order as the court thinks fit that relate to the winding-up petition. This is a discretion given by law to a High Court Judge.

[18] In the present case, on 5 August 2020, the High Court Judge had made an order that the appellant shall be wound-up on 5 January 2021 if fails to pay the judgment sums by that date. The condition to pay the judgment sums in five months period failing which the appellant shall be wound-up entails the ultimate result of granting the application for the winding-up of the appellant. The final order here is the winding-up of the appellant on 5 January 2021. The condition imposed by the High Court Judge is not entirely an independent remedy outside the application for the winding-up.

[19] In *See Teow Guan & Ors v. Kian Joo Holdings Sdn Bhd & Ors* [1997] 2 CLJ 299; [1995] 3 MLJ 598, this court had the opportunity to discuss the power of the High Court on hearing a winding-up petition and the relevant part that relates to this issue is as follows:

> In a textbook entitled *Applications to Wind up Companies* which is a work by Mr. Derek French, there appears the following commentary (at p. 130) on the court's powers under s. 125(1) of the Insolvency Act 1986, of the United Kingdom which, for present purposes, is in *pari materia* with s. 221(1) of the Act:
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> > *The power given to the court by s. 125(1) to make an interim or other order is limited to making ancillary orders in furtherance of or otherwise in connection with a present or prospective winding-up order; the subsection does not empower the court to order some remedy other than winding-up* (*Re RJ Jowsey Mining Co Ltd* [1969] 2 OR 549 (refd); *Re Humber Valley Broadcasting Co Ltd* [1978] 19 Nfld & PEIR 230; *Rafuse v. Bishop* [1979] 34 NSR (2d) 70 at pp 82-83; *Maldon Minerals NL v. McLean Exploration Services Pty Ltd* [1992] 9 ACSR 265. The court is, however, empowered to adjourn a winding-up application and give directions and order that if its directions are not followed then a winding-up order will be made (*Re RJ Jowsey Mining Co Ltd* [1969] 2 OR 549).
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> In *Re RJ Jowsey Mining Co Ltd* [1969] 2 OR 549, the Ontario Court of Appeal had to consider the powers of a companies court under s. 258 of the Corporations Act 1960 of that Province which was in the following terms:
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> > *The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally, or may make any interim or other order as is deemed just,* and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding-up and may also delegate any powers of the court conferred by this Act to any officer of the court.

Laskin JA, with whom MacKay JA agreed, when considering the effect of the identical phrase *'or other order'* appearing in the section said: A

> *The orders (interim or other order as is deemed just) which may be made under s. 258 on a winding-up application (short of dismissal of the application) are ancillary orders, referable to a winding up and which may result ultimately in dismissal or granting of the application according to whether the terms of such ancillary orders are or are not observed. I do not read s. 258 as empowering the court to stay a winding-up application and introduce an entirely independent remedy that will operate outside of a prospective winding up.* (emphasis added) B

[20] Laskin JA in the same case also said this: C

> Reference may aptly be made to s. 278 which permits the Court "at any time during winding up" to stay the proceedings altogether or for a limited time upon terms. Although I do not think that an independent remedy can be substituted, s. 258 does not provide considerable scope for interim adjustments or directions. *Its reference to "other order" must be given substance, and, having regard to the context of the section, I would construe those words as pointing to order in furtherance of or otherwise in connection with a present or prospective winding-up order.* (emphasis added) D

[21] Likewise in the present case, the condition to pay the judgment sums within five months relates to the winding-up of the appellant as the non-compliance of the condition resulting ultimately in the granting of the application to wind-up the appellant with effect on the 5 January 2021. As such, it falls within the provision "any other order as the court thinks fit" under s. 469(1)(c) of the CA 2016. E

[22] As alluded to earlier, although the phrase 'any other order as the court thinks fit" seems provides a wide discretionary power to the court but it is not without limitation. The order made must relate to the winding-up petition where the ultimate result is either to allow the application for the winding-up or to dismiss it. In the present case, the ultimate result is the application to wind-up the appellant was made when the condition to pay the judgment sum was not fulfilled. F G

[23] At this juncture, reference to the often-quoted Court of Appeal case of *Pyx Granite Co Ltd v. Minister Of Housing And Local Government & Another* [1958] 1 QB 554 is instructive, where Lord Denning explained:

> The principles to be applied are not, I think, in doubt. *Although the planning authorities are given very wide powers to impose "such conditions as they think fit", nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development.* The planning authority is not at liberty to use their power for an ulterior object, however desirable that object may seem to them to be in the public interest. (emphasis added) H I

[24] On the same issue, the Federal Court in *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135 had discussed the phrase "... or subject to such conditions as they think fit" under s. 14(1) of the Town and Country Planning Act 1947. In that case the principles in *Pyx Granite* (*supra*) and *Fawcett Properties Ltd v. Buckingham County Council* [1960] 3 All ER 503 were followed. Suffian LP in that case said this:

> I am fortified in my view by decisions on the Town and Country Planning Act in England. There too a land owner is not free to do what he likes with his land but must in certain circumstances first obtain planning approval and the planning authority may refuse permission; or may grant permission, in the words of section 14(1) of the Town and Country Planning Act, 1947:
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> > either unconditionally; or *subject to such conditions as they think fit.*
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> In *Pyx Granite Co Ltd v. Minister of Housing and Local Government* [1958] 1 All ER 625 Lord Denning said at page 633 that *the "condition* [imposed by the planning authority], *to be valid, must fairly and reasonably relate to the permitted development"*. These words were expressly approved by the House of Lords in *Fawcett Properties Ltd v. Buckingham County Council* [1960] 3 All ER 503. For instance, Lord Keith said at page 515:
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> > under section 14(1) of the Act, the planning authority may grant permission to develop land 'subject to such conditions as they think fit'. *I agree with what my noble and learned friend, Lord Denning, said in Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government that 'conditions to be valid, must fairly and reasonably relate to the permitted development'.*
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> Lord Jenkins said at page 521:
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> The law … may be thus summarised:
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> (i) Under section 14(1) of the Act of 1947 the respondents as local planning authority were empowered to grant permission for the proposed development either unconditionally or subject to such conditions as they thought fit or might refuse permission and under section 36 they were enjoined in the exercise of their functions to have regard to the provisions which, in their opinion, would be required to be included in the development plan for securing the proper planning of the area.
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> (ii) The power to impose conditions, though expressed in language apt to confer an absolute discretion on a local planning authority to impose any condition of any kind they may think fit, is, however, conferred as an aid to the performance of the functions assigned to them by the Act as the local planning authority thereby constituted for the area in question. *Accordingly, the power must be construed as limited to the imposition of conditions with respect to matters relevant, or*

reasonably capable of being regarded as relevant, to the implementation of planning policy. This accords with the concluding passage in section 36 above referred to. As was said by Lord Denning in *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government:*

> The principles to be applied are not, I think, in doubt. Although the planning authorities are given very wide powers to impose 'such conditions as they think fit', nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest.

Lord Denning himself sat in the House of Lords case of Fawcett and at page 518 he said:

> The local planning authority are empowered to grant permission to develop land 'subject to such conditions as they think fit'. But this does not mean that they have an uncontrolled discretion to impose whatever conditions they like. *In exercising their discretion, they must, to paraphrase the words of Lord Greene, M.R. in Associated Provincial Picture House, Ltd v Wednesbury Corpn [1947] 2 All ER 685 have regard to all relevant considerations and disregard all improper considerations, and they must produce a result which does not offend against common sense; or to repeat my own words in Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government, the conditions, to be valid, must fairly and reasonably relate to the permitted development;* or, yet again, to borrow the words of Lord MacNaghten and Lord Wrenbury in this House, a public authority which is entrusted with a discretion must act reasonably: see *Westminister Corpn v London & North Western Ry Co* [1905] AC 430, *Roberts v. Hopwood* [1925] AC 613. Out of these various shades of meaning, I am not sure that the last is not the best; for it puts planning conditions on much the same footing as bye-laws made by a local authority, to which they are so closely akin. Indeed, I see no difference in principle between them. As with bye-laws, so with planning conditions. The courts can declare them void for unreasonableness, but they must remember that they are made by a public representative body in the public interest. When planning conditions are made, as here, so as to maintain the green belt against those who would invade it, they ought to be supported if possible. And credit ought to be given to those who have to administer them, that they will be reasonably administered: see *Kruse v. Johnson* [1898] 2 QB 99. (emphasis added)

[25] Reverting to the present case, the imposition of the condition of five months' period for the appellant to pay the judgment sums, we find, is fair and reasonable and it benefited the appellant as the appellant was given time to pay the debts. The condition is also relevant because it relates to the winding-up application where the ultimate result is the winding-up of the appellant on 5 January 2021 by the order dated 5 August 2020.

[26] In the circumstances, we find that the conditional winding-up order dated 5 August 2020, is in accordance with the provision of s. 469(1)(c) of the CA 2016.

[27] Counsel for the appellant also submitted the word "any other order" under s. 469(1)(c) must be understood as any other order of an interim nature as the provision begins with "make an interim order or any other order …" Thus, it was contended that the principle of *ejusdem generis* is applicable.

[28] In this regard, we are unable to agree with this contention. The word 'any other order' after the word 'or' under s. 469(1)(c) is plain that it means any other order, other than the interim order. As such, the appellant's contention is bereft of any merit.

[29] Next, the contention that the High Court's power on hearing a petition on winding-up can only decide to dismiss or grant the application is misconstrued. This would make the phrase "other order as the court thinks fit" under s. 469(1)(c) superfluous and render the provision otiose. Clearly, the Parliament does not legislate in vain. In this regard, it is apposite to refer to the Federal Court case of *Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor* [2020]3 CLJ 153 where this was said:

> [38] The presence of the word "decision" in sub-ss. 68(3), 69(2), and (5), and the words 'cause or matter' in the definition of 'decision' cannot be overlooked or dismissed as being insignificant for *Parliament does not legislate in vain by the use of meaningless words and phrases. The court recognises that Parliament actually does nothing in vain. This court being an interpreter is therefore not entitled to disregard or ignore words used in a statute or to treat them as superfluous or insignificant. Prima facie, every word appearing in a statute must bear some meaning.* If I need to look at the authority on the principle of law on this point, this court in the case of *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636 is reported to have said:
>
> > The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant.* It must be borne in mind that:
> >
> > As a general rule, a Court will adopt that construction of a statute which will give some effect to all of the words which it contains, per Gibbs J in *Beckwith v. R* [1976] 12 ALR 333, at p. 337.
>
> [39] I am also mindful of another salutary principle of statutory construction. *It is clear and is rightly accepted thus far that a statute has to be read in the correct context and the interpretation of the meaning of the statutory words used should coincide with what Parliament means to say.* The Federal Court in *Generation Products Sdn Bhd v. Majlis Perbandaraan Klang* [2008] 5 CLJ 417 on this point said:

> I am drawn to the House of Lord's judgment of Lord Simon of Glaisdale, in *Farrel v. Alexander* [1976] 2 All ER 721, at pp. 735 to 736, where he discussed the question of reading the statute in the correct context:
>
> Since the draftsman will himself have endeavoured to express the parliamentary meaning by words used in the primary and most natural sense which they bear in that same context, the court's interpretation of the meaning of the statutory words used should thus coincide with what Parliament meant to say.
>
> -
>
> *The first or 'golden' rule is to ascertain the primary and natural sense of the statutory words in their context, since it is to be presumed that it is in this sense that the draftsman is using the words in order to convey what it is that Parliament meant to say.* They will only be read in some other sense if that is necessary to obviate injustice, absurdity, anomaly or contradiction, or to prevent impediment of the statutory objective. It follows that where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning. (emphasis added)

[30] Likewise in the present case, the phrase "any other order as the court thinks fit" under s. 469(1)(c) of the CA 2016 must not be disregarded or ignored. The purport and intent of Parliament in legislating this provision must be given its effect.

[31] We also find that the contention by counsel for the appellant that there was no winding-up order made against the appellant on 5 August 2020 is untenable as the order clearly states that the appellant shall be wound-up on 5 January 2021 upon failing to pay the judgment sums.

[32] Lastly, it is to be noted here that there is no provision under the CA 2016 and in particular s. 469(1) that prohibits the imposition of the condition to pay the debts within a period of time before the winding-up is made effective. On the contrary s. 469(1)(c), as discussed earlier, allows the High Court to do so.

Conclusion

[33] Based on the aforesaid reasons, it is our unanimous decision that the appellant's appeal is without merit, and as such the appellant's appeal is dismissed, and the decision of the High Court is affirmed. The appellant is to pay costs of RM5,000 to the respondent and subject to the payment of the allocator.